

Application No. 09/614,669 5
Amendment Dated: November 24, 2003
Response to Office Action Dated August 29, 2003

REMARKS/ARGUMENTS

Claims 1, 5-8, 10, 11, and 13-21 are pending in the Application. Claims 1, 8, and 14-16 stand rejected under 35 USC § 102(b)/103. Claims 5-7, 10, 11, 13 and 17-21 are objected to.

Claim Amendments

Claims 1 and 8 have been amended to add a step of assessing the test site for a response between the primary and secondary challenges. Support for this amendment can be found at page 7, line 8.

Rejection Over Fernstrom (*Acta Derm. Venerol.* 34 203, 1954)

Claims 8 and 14-16 stand rejected under 35 USC § 102(b) as anticipated by or, in the alternative, as obvious under 35 USC § 103(a) over Fernstrom (*Acta Derm. Venerol.* 34 203, 1954) alone or in view of Halliday, *et al.* (US 5,939,046). Claim 1 is not mentioned in the specific rejection, however, it stands rejected in the Office Action Summary so the Applicants assume it is rejected over the same art.

The Office Action assumes that, in a broad reading of the claims, the primary and secondary challenges can be administered concurrently simultaneously (sic). This assumption serves as the basis for citing the Fernstrom reference. Referring to Figures 1B and 1C, the Office Action states that the Fernstrom reference discloses a pressure patch test for demonstrating skin hypersensitivity to allergens. The Office Action further states that an allergen imbibed in the patch serves as a chemical challenge and the pressure created by a compression sponge after tape application serves as a physical challenge. The Office Action still further states that visual evaluation of a skin response would be generally understood and that the Halliday reference is relied on for teaching the use of a predefined scale. With respect to the assumption in the Office Action that the primary and secondary challenges are concurrent the Office Action also points out that Figure 1B shows application of a patch prior to application of the tape. The Office Action also provides more specific arguments with respect to Claims 8 and 14-16.

In response, the Applicants respectfully direct the Examiner to the amendment to Claims 1 and 8. Since the method described in the Fernstrom reference applies the tape immediately after application of the moistened patch (page 206, lines 40 and 41), there is

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neither disclosure or suggestion of an assessment step between patch application (said to be the primary challenge in the Office Action) and tape application (said to provide a secondary, physical challenge in the Office action). Therefore, the Fernstrom reference neither anticipates Claims 1 and 8 as amended nor makes the amended claims obvious.

The addition of the Halliday reference fails to overcome the deficiency. As noted in the Office Action, the Halliday reference was combined with Fernstrom for the purpose of providing a teaching of the use of a predefined scale. Obviously, a method using a combination that teaches the use of a clinical scoring system (Halliday, col. 4, line 63) with a "pressure patch" (Fernstrom, page 208, line 4) still does make an assessment step between a primary and a secondary challenge obvious.

Given that the Applicants have shown that Fernstrom alone or in combination with Halliday fails to anticipate or make obvious Claims 1 and 8 as amended and given further that Claims 14-16 depend from Claim 1, having all the limitations of the base claim, the Applicants respectfully request that the rejection of Claims 8 and 14-16 be reconsidered and withdrawn and that Claims 1, 8 and 14-16 be allowed.

Objections to the Claims

Claims 5-7, 10, 11, 13 and 17-21 are objected to. While it is not explicitly stated in the Office Action, the Applicants assume that the objection is based on a dependency from a rejected base claim and that the Claims are otherwise allowable. Given that the Applicants have shown that the amendment to Claims 1 and 8 overcomes the rejection thereof and given further that Claims 5-7, 13 and 17-21 depend from Claim 1 and Claim 11 depends from Claim 8, each dependent claim having all the limitations of the base claim, the Applicants respectfully request that the objection to Claims 5-7, 10, 11, 13 and 17-21 be withdrawn and that the claims be allowed.

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SUMMARY

All of the objections and rejections in the Office Action have been discussed as have the distinctions between the cited references and the claimed invention. No new matter has been added by the Amendment. In light of the discussions contained herein, the Applicants respectfully request reconsideration of the rejections and their withdrawal, and that all of the claims be allowed. Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

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